

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1128

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P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1128

UNITED STATES OF AMERICA,

Appellant,

—v.—

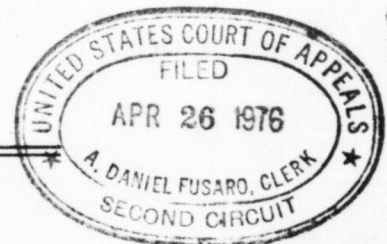
MARIO GIGANTE, et al.,

Defendant-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR THE UNITED STATES OF AMERICA

ROBERT B. FISKE, JR.,
*United States Attorney for the
Southern District of New York,
Attorney for the United States
of America.*



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PAGINATION AS IN ORIGINAL COPY

V.
GIANTE

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THE COURT: May I put my rulings on the record at this point.

I am dealing, as the record shows, with motions to suppress certain wire tap evidence. The wire taps were obtained on various telephone numbers pursuant to the following court orders:

An order of Judge Gurfein, November 10, 1972; an order of Judge Motley, November 30, 1972; another order of Judge Gurfein, December 8, 1972; an order of Judge Carter, December 27, 1972; an order of Judge Tyler, February 7, 1973; an order of Judge Ward, March 7, 1973.

All of the above orders were by Judges in the Southern District of New York. In addition, there was an order issued by Judge Bartels of the Eastern District of New York, April 13, 1973.

Wire taps were conducted on various telephone numbers covered by these orders and the wire tap evidence has been gathered and the Government presumably would rely heavily upon such evidence at the trial of the present case.

The motions to suppress made on behalf of the defendants relate to several grounds which I will deal with now.

One of the grounds relates to the requirement

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2 of 18 USC 2518 (8)(a), which provides as follows:

3 "Immediately upon the expiration of the period
4 of the order or extensions thereof such recordings shall
5 be made available to the Judge issuing such order and
6 sealed under his directions. Custody of the recordings
7 shall be wherever the Judge orders."

8 The statute goes on, or this provision goes on
9 to provide as follows:

10 "The presence of the seal provided for by this
11 subsection, or a satisfactory explanation for the absence
12 thereof, shall be a prerequisite for the use or disclosure
13 of the contents of any wire or oral communication or evi-
14 dence derived therefrom under subsection 3 of Section 2517."

15 The facts with respect to the judicial sealing
16 under this provision are as follows:

17 The first order of November 10, 1971, issued
18 by Judge Gurfein expired November 25, 1972. The FBI agent
19 Nalley, who was in charge of supervising the wire tape, has testi-
20 fied that sometime in December, the particular date of which
21 he does not know, he went with the Strike Force Attorney
22 by the name of Dougherty to Judge Gurfein's chambers or
23 robing room and took the tapes which had been accumulated
24 pursuant to Judge Gurfein's November 10, 1971 order.

25 Agent Nalley has testified that on that occa-

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2 sion Judge Gurfein was presented with these tapes and asked
3 certain questions about them and about their custody.

4 Agent Nalley has testified that at the conclu-
5 sion of that proceeding the tapes were placed in a box and
6 evidence tape was placed around that box and initialed by
7 Judge Gurfein. No memorandum or order or record of that
8 proceeding was made except for the evidence tape placed
9 around the box and initialed by Judge Gurfein. Agent Nalley
10 testified that Judge Gurfein orally directed that the box
11 be returned to the FBI.

12 It appears that recently, in preparation for
13 the trial or suppression hearing in this action, the
14 Government has obtained an order unsealing those tapes.

15 It further appears that the box and the evidence
16 tape initialed by Judge Gurfein. Nor is there anything
17 definite about the date in December when this occurred.

18 With respect to the tapes gathered and recorded
19 pursuant to the other six wire tap orders, the facts are
20 as follows:

21 The order of November 30, 1972, expired December
22 14, 1972. The order of December 8, 1972, expired December
23 23, 1972. The order of December 27, 1972, expired January
24 10, 1973. The order of February 7, 1973, expired February
25 22, 1973. The order of March 7, 1973, expired March 22, 1973.

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2 The order of April 13, 1973, expired April 28, 1973.

3 No attempt was made to obtain sealing orders
4 from the issuing judges until January 1974. At that time,
5 applications were made by a Joint Strike Force attorney
6 indicating that there had been an oversight in not applying
7 for an 8(a) order at an earlier date and requesting the
8 relevant orders, were made available to each of the orders
9 providing for continued custody of the tapes by the FBI. On
10 January 7, and 8, 1974, a series of orders were made by the
11 issuing judges providing for the retention in custody by the
12 FBI. These are the first and only orders which the Government
13 contends were made pursuant to Section 8(a), as to these
14 tapes.

15 The Government has offered no evidence of any
16 excuse whatever regarding the reason why there was a delay
17 of several months, and in some cases more than a year, before
18 the tapes were taken to the issuing judge for a sealing
19 order under Section 8(a).

20 I should note that there is no actual evidence
21 that the tapes were tampered with or altered during the time
22 of the delay or at any time. It appears that the tapes were
23 sealed by the FBI after recording and that such seals were
24 maintained appropriately until this time.

25 This application for suppression of the tapes for

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2 Section 8(a) raises a question of law and statutory interpre-
3 tation. The Government contends that the basic purpose of the
4 statute has been complied with in that the reason for requiring
5 judicial sealing was to protect the integrity of the contents
6 of the tapes and to protect their confidentiality, and the
7 Government contends that there is no evidence that the integrity
8 of the tapes has been interfered with and no evidence that they
9 have been revealed to unauthorized persons.

10 The Government further argues that the statute
11 provides in 18 USC 2518 (10) (a) specific grounds upon which
12 suppression motions may be made and that the violation of
13 Section 8(a) is not within those grounds.

14 There is no Second Circuit or Supreme Court
15 authority directly on point. The closest case in the Second
16 Circuit is U.S. v Poeta, 455 Federal 2nd. 117, decided in
17 1972; however, that case involved a delay by New York authori-
18 ties of a few days in presenting the tapes for judicial
19 sealing to a Justice of the State Court. Our Court of Appeals
20 held that there was a satisfactory explanation for the delay
21 within the meaning of Section 8(a) of the Wire Tap Statute.

22 Here admittedly there is no satisfactory explana-
23 tion or excuse for the much longer delays occurring in the
24 present case.
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2 The Government relies on a Third Circuit case,
3 U.S. v. Falcone, 505 Federal 2nd. 478, decided in 1974.
4 Certiorari was denied by the Supreme Court in both Poeta
5 and Falcone.

6 Basically, the majority opinion in Falcone is
7 in accord with the argument advanced by the Government in
8 the present case. Judge Rossen dissented, interpreting the
9 law differently.

10 Respectfully, I am constrained to regard the
11 dissent in Falcone as the more persuasive view. The reason-
12 ing of the dissent in Falcone, which I regard as correct, is
13 that Section 8(a) deals specifically with the circumstances
14 under which wire tap can be used or not used as evidence in
15 relation to the judicial sealing requirement. I believe that
16 this specific reference in the statute is directly applicable
17 and is in no way overridden by the more general provisions
18 of Section 10(a).

19 As I already quoted, Section 8(a) provides that:
20 "The presence of the seal provided for by this subsection,
21 or a satisfactory explanation for the absence thereof, shall
22 be a prerequisite for the use or disclosure of the contents
23 of any wire or oral communication or evidence derived therefrom
24 under subsection 3 of Section 2517."

25 In my view, the seal provided for by this section

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2 is a judicial seal issued immediately upon the expiration
3 of the period of the order, and a judicial order issued
4 months or even a year after the expiration of the wire tap
5 order is in no sense the seal provided for by this section of
6 the statute.

7 The word "immediately: is important. How much
8 time might be encompassed in a given case by the word
9 "immediately" I do not have to determine, except to say that
10 there is no real contention in the present case that the
11 period of several months or a year in any respect constituted
12 compliance with the word "immediately."

13 in my view, to permit the Government to introduce
14 the wire tap evidence in question would be simply to read out
15 of the statute the provision of 8(a).

16 The Government's contention that there is no evi-
17 dence tampering or unauthorized disclosure is not sufficient
18 to comply with the statute. The statute expressly requires
19 protective action by the issuing judge immediately after the
20 expiration of the wire tap order. The Congress clearly
21 demanded more than merely entrusting the taps to the investiga-
22 tive agency for an indefinite period.

23 Even as to the original sealing proceeding before
24 Judge Gurfein, it seems to me that this proceeding does not
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2 comply with the requirements of the Statute. There was no
3 written order regarding custody and no record of the proceedings
4 aside from Judge Gurfein's initials on a tape. Even the date
5 of the proceeding is only fixed as some time in December 1972.

6 I am suppressing all the evidence obtained under
7 all wiretap orders because of violation of 8(a).

8 There is another ground of motion which I feel
9 has merit. This is based upon the requirement of 18 USC 2518,
10 subsection 4, which requires that "each order authorizing
11 interception shall specify the identity of the person, if
12 known, whose communications are to be intercepted."

13 It appears that defendants Falco and DiSalvo were
14 not named in the November 10 and November 30 orders.

15 It further appears, and I find as a fact, that
16 Agent Nalley knew, as of the time of the applications for the
17 November 10 and November 30 orders, that there was probable
18 cause to believe that DiSalvo and Falco had committed the
19 crimes in question and would be communicating on the tele-
20 phones involved in those applications.

21 Consequently, I grant the motions of those
22 defendants specifically to suppress any wire tap evidence ob-
23 tained pursuant to the November 10 and November 30 orders.
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2 dealt with much more quickly.

3 The defendants raise the statutory requirement of
4 minimization and I have heard evidence and examined documents
5 with respect to that point. Without elaborating, I hold that
6 Agent Nalley gave the other agents participating in the
7 interceptions satisfactory and adequate instructions as to
8 the delineation between pertinent and non-pertinent conversa-
9 tions, and I find that there is no reason whatever to believe
10 that those instructions were violated, nor any reason to con-
11 clude whatever that there was a violation of the minimization
12 requirement of the statute.

13 I hold that there was a good-faith effort and a
14 reasonable effort and a successful effort to basically limit
15 this surveillance to pertinent conversations.

16 Another point made by the defense is that there
17 was an insufficient recital in the applications of the
18 Government for the wire tap orders indicating that normal
19 investigative procedures were inadequate. I find to the
20 contrary. I find that these affidavits contain a reasonable
21 summary of the non-wire tap steps taken in the investigation
22 and that they presented all that could reasonably be expected
23 in the way of a presentation as to the inadequacy of those
24 procedures.

25 Another point made by the defense is that there

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2 was a lack of probable cause presented by the Government
3 in seeking the wire tap orders. The affidavits presented
4 by the Government to the judges issuing the wire tap orders
5 contained ample in the way of probable cause, to say the
6 lease. However, certain of the defense counsel have urged
7 that there are implausible statements contained in these
8 affidavits, so imlausable on their face as to require an
9 evidentiary hearing, looking behind the affidavits as to
10 their truth and veracity.

11 I find to the contrary, and I find no sensible
12 reasoning having been presented as to why these affidavits
13 in any material respects are inherently so implausible as to
14 require an evidentiary hearing going behind the affidavits.

15 Another point made by the defense is that there
16 was non-compliance with the requirements of 18 USC 2518 (8)
17 (d). This provision provides that within reasonable time,
18 but not later than 90 days after the termination of the
19 order, the issuing judge shall cause to be served on the
20 persons named in the order and such other parties to inter-
21 cepted communications, an inventory. In other words, this
22 is the requirement of service upon the affected persons of
23 an inventory of the taps.

24 There is a provision, however, that for good
25 cause a judge may extend or postpone the time of serving the

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inventory.

There are only two situations in which inventories were served beyond either the 90-day period or an extension thereof. These two situations relate to the orders of March 7, 1973, and April 13, 1973.

The Government concedes that these inventories should have been served or were due respectively on June 18, 1973, and July 25, 1973.

It happens that all of the inventories were served August 4, 1973, relating to all of the orders in question. In all cases but two there had been express extensions of time for service of the inventories until dates in August and September, subsequent to August 4, 1973.

Unlike the situation with the juridical sealing requirement, the requirement for service of inventories does not carry with it any express enforcement provision or any express provision about the use or non-use of the evidence under specified conditions.

I decline to suppress any of the evidence on the ground of failure of timely service of the inventories, and I refer to the U.S. v Rizzo, 492 Federal 2nd. 443, certiorari denied.

The final ground which can be dealt with quickly is a contention that during the time of the wire tap order

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there was inadequate judicial supervision. I reject this
as a specific ground for suppression.

In conclusion, I deny the applications to suppress the wire tap evidence except with respect to the two situations I have specifically dealt with in granting the motions in part, that is, I grant the motion to suppress the wire tap evidence for violation of 18 USC 2518 (8) (a), and in addition, I grant the motions of DeSalvo and Falco for suppression as to them of wire tap evidence derived under the order of November 10, 1972 and November 30, 1972, because of failure of compliance with 18 USC 2518 subsection 4.

I think that concludes today's proceedings.

UNRECORDED ORDER
NOT TO BE FILED
PER CIRCUIT RULE 28

A

For the Seventh Circuit

13 Chicago, Illinois 60604
(ARGUED JUNE 2, 1975)

August 20, 1975

Before

Hon. THOMAS E. PATRICK, Chief Judge

Hon. LEONARD P. MOORE, Senior Circuit Judge

Hon. WILLIAM E. PEEB, JR., Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No.:

vs.

74-1987 GEORGE LAWSON and RONALD
74-1996 SCHARF,

Defendants-Appellants.

Appeal from the United
States District Court
for the Northern District
of Illinois, Eastern
Division, No. 74 Cr. 1

RECEIVED DEPT. OF JUSTICE

O R D E R

George Lawson and Ronald Scharf appeal from their conviction by a jury trial before Judge Bernard L. ... Northern District of Illinois, on a one count indictment charging Lawson and Scharf as well as Harold Arnsperg and George ... with conspiring to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846. Lawson pleaded guilty and testified at the government's the joint trial of Lawson, Arnsperg, and Scharf. Lawson and Scharf raised a plethora of issues on appeal including lack of speedy trial; a bar to prosecution for prior conviction of an indictable with prejudice; defective instructions as to reference to cocaine rather than pure cocaine; statutory vicarious liability or becoming an a narco-criminal; in wiretap evidence concerning suppression; proof of a criminal conspiracy rather than a simple one; a double jeopardy bar.

Honorable Leonard P. Moore, Senior Circuit Judge of the
U.S. Court of Appeals for the Seventh Circuit, sitting by
designation.

in terms of a relationship between a prior conspiracy for which Lawson was convicted and the instant conspiracy; improper admission of "business records"; prejudicial conduct of trial judge; and the giving of a portion of the charge in Lawson's absence.

Although we do not discuss each issue below, we have considered each of the issues raised very carefully and we affirm the convictions.

The evidence at trial indicated that Lawson who was residing in Jamaica, B.W.I., acted as a go-between in getting Scharf, a potential Chicago purchaser-distributor of cocaine, into contact with Matthews who lived in Florida and had large quantities of cocaine for sale.

Lawson, a resident of Jamaica, sent his girlfriend to Matthews' Miami home in August 1971 to obtain cocaine and bring it to Jamaica. Lawson then telephoned Matthews and indicated that he knew several people in the United States who would be interested in purchasing cocaine. Matthews gave Lawson an unpublished phone number to be given to "Ronnie" from Chicago. Following a phone contact, Ronald Scharf and Ira Bernstein flew to Miami to see Matthews, where the three of them sampled cocaine. Scharf left for Chicago with an ounce and a half sample having given Matthews two phone numbers where he could be reached, one of them being a number for the Playboy Mansion. Scharf returned to Miami a few days later but no transaction occurred due to Scharf's financial inability. On September 10, 1971 Scharf visited Matthews, accompanied by Robbie Arnshein, and in the course of the visit accepted a half-pound of cocaine. On September 13 an informant carrying \$6,250 in government funds purchased some cocaine from Scharf, while drug enforcement agents watched, although they were unable to see the exchange of money for the white crystalline powder.

On September 14, Lawson phoned Matthews to inquire when he (Lawson) would be paid for the Scharf-Matthews transaction.

About a week later Matthews and his wife drove to Chicago where Matthews and Scharf discussed payment to Scharf to "B.D." for the half pound at the Arnshein apartment.

Scharf arranged a purchase with Matthews in November for the informant and an undercover agent. In the meantime

Scharf's phone had been tapped. Matthews was arrested when he attempted to complete a cocaine sale with the undercover agent.

Appellants have raised many issues involving the obtaining and processing of wiretap evidence and the conduct of the trial. Before discussing the claims based on governmental non-compliance with the provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 we will consider a few of appellants' arguments with respect to alleged faulty trial procedures.

LACK OF SPEEDY TRIAL

Lawson and Scharf were both named in an indictment in this case in December 1972 and they claim that they were deprived of their constitutional right to speedy trial by the twenty-two month pre-trial delay from December 1972 to October 1974. The right of a defendant to a speedy trial is not absolute and exists in a balance with the right of the public to have offenders prosecuted. The Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972) has indicated that where a delay has occurred a court must consider four factors -- (1) the length of delay; (2) the reasons for delay; (3) defendant's requests for trial; and (4) whether or not defendant was prejudiced by the delay -- to determine whether a defendant has been denied his constitutional right to speedy trial. In this case, considering these factors, we find that Lawson and Scharf did not suffer a deprivation of their constitutional speedy trial right.

Trial was originally scheduled for June 1973 but the government's chief witness Matthews disappeared before trial. In August 1973 Lawson filed a demand for immediate trial. In September 1973 due to Matthews' continuing unavailability, the government moved to dismiss the original indictment. Matthews was located in October 1973 and the second indictment was returned in March 1974. The case was set for trial for July 1974 but was continued until October 1974 because of the calendar situation for a trial of the length estimated by counsel.

In *Barker v. Wingo*, supra, reaffirmed in *Moore v. Arizona*, 414 U.S. 25 (1973), the Supreme Court indicated that a court must examine and balance the above-mentioned factors. The factors, turn to the reasons for the delay. The initial delay in the summer of 1973 was the result of Matthews' unavailability. There has been no indication that the government did not make a effort

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Judge Decker informed counsel that he would be attending a judicial administration conference on July 27. Defense counsel indicated that they did not believe the trial could be completed by then. Since counsel for Bernstein was unavailable in August and Judge Decker had another lengthy trial scheduled in September, trial was set for October 21, 1974. Based upon the record in this case, we find that the defendants were not deprived of a speedy trial.

DOUBLE JEOPARDY

Lawson claims that his conviction in this case violates the constitutional protection against double jeopardy due to the alleged relationship between the instant conspiracy and the conspiracy charged in *United States v. Lawson*, 507 F.2d 433 (7th Cir. 1974). An examination of the facts of the earlier case reveals that the two conspiracies were different and prominent in for each is entirely proper. While there are some similarities between the two conspiracies, the portion involved, the mode of distribution, and Lawson's role were different in each and his double jeopardy claim must fail. See *United States v. Morris*, 433 F.2d 564 (2d Cir. 1970), cert. denied, 401 U.S. 971 (1971); *Cl. Bryden v. United States*, 753 F.2d 1006, 1009, (5th Cir. 1985); *United States v. Leland*, 366 F.2d 853, 872 (2d Cir. 1967), cert. denied, 386 U.S. 919 (1967).

THE RELEVANT EVIDENCE

Congress has specified the procedure for securing judicial authority to intercept wire communications in the investigation of certain serious offenses in Title III of the Crime Control and Safe Streets Act of 1968, 18 U.S.C. 552510-2520. 18 U.S.C. 552516W provided that the atty Gen'l CIA

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especially designated Assistant Attorney General must authorize every wiretap application submitted for approval to the district court.^{2/} The district court must make certain findings before authorizing interceptions including (1) the lack of other investigative techniques and (2) the existence of probable cause.^{3/} The law enforcement agency is required to produce the tapes to the authorizing judge for sealing once the order expires and the statute provides for official control of the custody of any recordings or tapes until the time of trial.^{4/} Notification to those subject to the surveillance is required prior to use of the tap evidence at trial.^{5/} Suppression of evidence derived from electronic surveillance is required by the statute when communication has been unlawfully intercepted or when approval of the wiretap order is insufficient on its face.^{6/}

Appellants moved to suppress the wiretap evidence prior to and at trial, alleging violations of all of the provisions referred to above. The trial judge denied the suppression motion and admitted the evidence. We must determine whether this government failures to comply with statutory provisions are of the type which "... require suppression where there is failure to affirm any of those statutory requirements that directly and unambiguously implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device." United States v. Giordano, 416 U.S. 505 at 527 (1974).

Appellants have raised the question of whether wiretap authorizations signed by an acting Assistant Attorney General, not specially authorized to approve electronic surveillance under 18 U.S.C. §2516(1), must be suppressed as facially insufficient under 18 U.S.C. §2518(10)(a)(ii). See notes 2 and 6 supra.

We are not dealing with a claim that the wiretap authorization was not authorized by the Attorney General or an Acting Attorney General because the defendants have not presented any competent affidavits indicating that Attorney General John N. Mitchell himself authorized the surveillance. Rather, the attack is on the facial sufficiency of the affidavit because the authorization order was signed by Acting Assistant Attorney General Robert Peterson. The order was signed by Peterson in November 1972 approximately two months prior to Senate confirmation of his appointment. We agree with the holding of the Third Circuit in United States of America v. Aron, Criminal No. 72-193, 478 F.2d 1006, 1016 (3d Cir. 1973) where there were similar factual circumstances. The court found the facial insufficiency of an authorization order signed by Acting Assistant Attorney General Peterson where

Attorney General himself had approved the application too technical to require suppression. See United States v. Chavez, 416 U.S. 562 (1974). See also United States v. Robertson, 574 F.2d 289 (5th Cir. 1974); United States v. Boone, 346 F.Supp. 168 (E.D. Va., 1972) aff'd sub. nom., 489 F.2d 551 (4th Cir. 1974). In Chavez the Supreme Court distinguished the requirement of a properly authorized officer from the requirement of identifying the authorizing official. Because the latter requirement was merely designed to fix responsibility, it does not establish a substantive rule and as a technical violation does not require suppression. We do not suggest that the government is free to pick and choose which technical requirements to comply with and which to flout; rather we believe that the government should in the future comply with all the requirements which Congress set up for use of such an unusual investigative technique. We merely find that the drastic remedy of suppression is not required where this technical violation occurs and the general purpose of the statute has been preserved. In this instance the purpose of the statute was carried out inasmuch as the Attorney General himself authorized the order in fact.

Appellants also challenge the sufficiency of the order's underlying affidavit as to probable cause. See note 8 supra. We agree with the conclusion of Chief Judge Robson, who ordered the wiretap, that there was probable cause to believe that defendant's drug-related conversations would be intercepted through surveillance of the named telephone.

Chief Judge Robson issued the wiretap order, covering two telephones listed in the name of Scherr's roommate Lee Smith on November 22, 1971 for a fifteen day period expiring December 7, 1971. At the time he had before him a wiretap authorization letter of Acting Assistant Attorney General Peterson, an application for wiretap authorization order signed by a Special United States Attorney, and an affidavit in support of application given by Agent Lucilio one of the agents of the Los Angeles Narcotics and Dangerous Drugs who had been engaged in surveillance and undercover work on this case.

Lucilio's affidavit set out detailed information from a reliable informant and corroborated by KKKO agents' surveillance and independent investigation. This informant was introduced to Scherr in early September 1971 by a third person known for the purpose of obtaining cocaine. According to the agent's affidavit, Scherr told the informant that he could obtain unlimited cocaine and he gave Scherr a sample. A week later the informant purchased a half-pound of cocaine from Scherr. This transaction was observed and surveilled by KKKO agents who were

to see the actual transfer. At this time, a telephone relationship between Scharf and the informant was established, and, in response to a suggestion of the informant, Scharf refused to meet the informant's boss. Between September 15 and October 15, Scharf and the informant maintained telephone contact, on one of Sapstein's phones, involving a pending sale of narcotics which included an extra measure to make up for the poorer quality of the first transaction as compared with the sample. Scharf told the informant that his source was a man named George in Jamaica. BUREAU agents checked the phone records and learned that 23 calls were made from the Sapstein phone to a George Lewis in Jamaica. The informant also told the agents that Scharf was reorganizing his business after November 7, 1971 and later he gave to agents the two new non-published numbers which had been installed at the Scharf-Sapstein apartment and which were provided to him by Scharf. We believe that a reasonable man would conclude that Scharf was using the two non-published numbers to arrange for the importation and distribution of cocaine. See *United States v. James*, 494 F.2d 1007, 1015 (D.C. Cir. 1974) for a probable cause finding based on a similar fact pattern.

Appellants also argue that suppression was required because of deficiencies with respect to the requirements of §§2518(1)(c) and (3)(c) of a statement in the affidavit and a determination by the Court that other investigative procedures are unavailable. As the Supreme Court noted in *United States v. Rabin*, 415 U.S. 143, 153 n. 12 (1974) these requirements are "designed to assure that wiretapping is not resorted to in situations where traditional investigative techniques would suffice to expose the crime." In this instance it was clear from the agent's affidavit that other investigative techniques were inadequate inasmuch as surveillance had not been totally successful and since Scharf had exhibited such reluctance to meet with the informant's boss. Furthermore, in view of the fact that the source was in Jamaica, wiretapping was the only feasible means suitable to determine delivery techniques, when, and place. See *United States v. James*, supra. We hold that the judge acted on accurate basis on which to determine the unavailability of other investigative procedures and that he was able to make a determination.

Finally, appellants challenge the government's compliance with statutory prerequisites involved in four aspects of the wiretap procedures: (1) the taps were not "immediately" (2) they were "not used" in the directions of Judge Hoffman than Chief Judge Nelson who had granted the authorization. *ORSEP*

(3) some of the seals affixed in Judge Austin's presence were broken prior to trial; and (4) delay in providing an inventory of the tapes to Schari and failure to provide an inventory to Lawson, the other party named in the wiretap warrant.

The government has suggested that the post-interception sealing violations by their nature might not be cognizable under the 18 U.S.C. §2518(10)(a)(i) suppression section. See note 6 supra. We do not agree and we hold that the post-interception violations must also be scrutinized to determine if the failures to satisfy the statutory requirements directly and substantially affect the Congressional intention to limit the use of intercept procedures and to comply with Fourth Amendment principles. The Ninth Circuit in United States v. Chyn, 503 P.2d 543 (9th Cir. 1974) advocated a three step test to determine whether or not §2518(10)(a)(i) requires suppression for a post-interception failure to comply with statutory requirements:

1. Whether the particular procedure is a central or functional safeguard in Title III's scheme to prevent abuses;
2. whether the purpose which the particular procedure was designed to accomplish has been satisfied in spite of the error;
3. whether the statutory requirement was deliberately ignored; and, if so, whether there was any tactical advantage to be gained thereby.

See also United States v. Paley, 505 P.2d 478, (2d Cir. 1973).

We believe that the function of the post-interception procedural requirements is to preserve the integrity of the intercepted conversations and to prevent any tampering or leaking of the tapes or other material used. While the constitutional pre-order requirements are central to the Congressional goal of limiting the use of wiretapping as an investigative technique, the post interception integrity measures are also important.

As to appellants' claim that suppression was required because the tapes were preserved to a different judge than the judge who signed the wiretap order, we find that this is a frivolous argument. The purpose to be served by judicial supervision was accomplished and was no less effective by virtue of the difference of judicial personnel.

We are troubled, however, by the delay of fifty-seven days from the expiration of the interception order to the presentation of the tapes to a judge for sealing. The statute requires that this presentation occur "immediately" and the difference between "immediately" and "fifty-seven days" is not insignificant. We do not assign error to the failure to suppress the tap evidence on this ground because the appellants have not questioned the integrity of the tapes. The purpose of the statute, to insure the integrity of the tapes, thus was accomplished. The record indicates that the agent had sealed the envelopes containing the tapes immediately after the interceptions and when the tapes were presented to the court the sealed envelopes were placed in boxes which were then sealed. The government has sought to excuse the delay by virtue of Agent Amelio's travel on other assignments. We find this explanation somewhat unconvincing when juxtaposed to the government's argument that judges are susceptible for purposes of sealing wiretap evidence and we again urge the government to comply with statutory wiretap requirements both pre-interception, and post-interception to the fullest extent possible, rather than continue its unenthusiastic approach for the "technical" requirements demonstrated in this particular case.

Appellants also complain of broken seals on the tape evidence when brought to trial. Again we believe suppression is warranted due to the absence of challenge to the integrity of the tapes. The broken seals occurred on the tapes while the seals on the envelopes which were secured by Agent Amelio were intact. Although we believe this deviation from the statutory requirement does not warrant suppression absent a challenge to the integrity of the evidence, or an allegation that the government acted deliberately to cause the breaking, the government's explanation that the seals were broken due to their proximity for some time to office air-conditioning - heating system which is somewhat speculative.

The final post-interception question raised by appellants is the failure of the government to comply with the provisions of Title 11 requiring the government to provide the appellants with a notice of a wiretap order within 60 days of the termination of the surveillance. See 18 U.S.C. § 2518(10)(b). The defendant did not receive the notice and inventory until April 1974, over ten years after termination of the wiretap statute. While this is another example of the government's cavalier attitude of the government toward significant constitutionally mandated procedures, we believe that suppression is not required inasmuch as defendants received the inventory ten months prior to the hearing on defendants' motion to suppress.

and furthermore appellants have not alleged any prejudice resulting from this noncompliance. See *United States v. Wolk*, 464 F.2d 1143 (8th Cir. 1972). See also *United States v. Jones*, 508 F.2d 1134, 1138-9 (8th Cir. 1975); *United States v. Zambrini*, 488 F.2d 588, 602 (2d Cir. 1973) cert. denied, 417 U.S. 936 (1974); *United States v. Lammell*, 477 F.2d 999, 1003 (3d Cir. 1973) aff'd, 95 S.Ct. 1754 (1975).

We hold that the wiretap evidence was properly admitted at trial, that defendants were not deprived of the constitutional right to a speedy trial, and that Lawson's trial on this indictment did not subject him to double jeopardy. We affirm the convictions.

1. Robbie Aronstein died following the trial and the indictment against her was subsequently dismissed.

2. 18 U.S.C. §2516(1) provides:

The Attorney General, or any Assistant Attorney General specially designated by the Attorney General may authorize an application to a Federal judge of competent jurisdiction for . . . an order authorizing or approving the interception of wire or oral communications.

3. 18 U.S.C. §2518(1) (b) and (c) provide:

(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing and each application to a judge of competent jurisdiction shall state the applicant's authority to make such application. Each application shall include the following information:

* * *

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a brief description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communication sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous; . . .

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(3) Upon such application the judge may enter an ex parte order as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that--

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) there is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, lined to the name of, or commonly used by such person.

4.

18 U.S.C. § 2518(6) (a) provides:

... Immediately upon the expiration of the period of the order, or extension thereof, such recordings shall be made available to the judge issuing such order and stored under his directions. Custody of the recordings shall be wherever the judge orders.

5.

18 U.S.C. § 2518(1) (b) provides:

(b) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 2518(1) (a) there is made or the termination of the period of an order or extension thereof, the issuing or denying

judge shall cause to be served, on the persons named in the order or the application, and such other parties to interested communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of --

(1) the fact of the entry of the order or the application;

(2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(3) the fact that during the period wire or oral communications were or were not intercepted.

6.

Evidence obtained in violation of Title III may not be used according to 18 U.S.C. §2515 which provides:

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial . . . if the disclosure of that information would be in violation of this Chapter.

Suppression sanctions for improperly intercepted communications are included in 18 U.S.C. §2512(10(c)):

(10(c)) Any employed person in any trial, hearing, or proceeding in or before any court, or before any officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, any person to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that --

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is not in full compliance with the law; or

(iii) the interception was not made in conformity with the law.

7.

Compare note 2 with §2518(4)(d) which provides as follows:

(4) Each order authorizing or approving the interception of any wire or oral communication shall specify --

* * *

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; . . .

8.

See also United States v. Sklaroff, 506 F.2d 837 (5th Cir. 1975).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
 APPLICATION OF THE UNITED STATES :
 OF AMERICA IN THE MATTER OF AN : Misc. No.
 ORDER AUTHORIZING THE INTERCEPTION :
 OF WIRE COMMUNICATIONS :
 -----x

ORDERAUTHORIZING INTERCEPTIONS OF WIRE COMMUNICATIONS

TO: Special Agents of the Federal Bureau of Investigation,
 United States Department of Justice

Application under oath having been made before me by Patrick T. Philbin, an attorney with the Organized Crime and Racketeering Section of the United States Department of Justice, currently assigned to the Southern District of New York, and an "Investigative or Law Enforcement Officer" as defined in Section 2510(7) of Title 18, United States Code, for an Order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the court finds:

(a) there is probable cause for belief that JOSEPH DENTI, JOSEPH SARGINELLA a/k/a SASH, NICHOLAS LONGO, NUNZIO GRIECO, ARMANDO COZZA, SOL BIEBER a/k/a PERCY and others as yet unknown have committed and are committing offenses involving the operation of an illegal gambling business of five or more persons, which illegal gambling business has a gross revenue in excess of \$2,000 in a single day or has been in substan-

tially continuous operation for a period in excess of thirty (30) days in violation of Article 225 of the Penal Law of the State of New York and thereby in violation of Section 1955 of Title 18, United States Code, and are conspiring to commit such an offense in violation of Section 371 of Title 18, United States Code;

(b) there is probable cause to believe that particular wire communications concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular these wire communications will concern the receipt and placing of bets and lay-off wagers on horse races and sporting events, the exchange of line information, and the dissemination of such information to persons engaged in the unlawful business of gambling, and the participants in the commission of the above described offenses;

(c) normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) there is probable cause to believe that one (1) telephone bearing number (212) 365-1922 subscribed in the name of Mary Penna, 663 Crescent Avenue, Apartment 4-C, Bronx, New York, is being utilized at 2328 Hughes Avenue, Apartment 17, Bronx, New York, through the attachment of a

bootleg wire by JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "SASH", NICHOLAS LONGO, NUNZIO GRIECO, ARMANDO COZZA, SOL BIEBER a/k/a "PERCY" and others as yet unknown in a continuing conspiracy to violate Section 1955 of Title 18, United States Code.

WHEREFORE, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice are authorized, pursuant to application authorized by the Attorney General of the United States, the Honorable Richard G. Kleindienst, to exercise the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

(a) intercept wire communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a SASH, NICHOLAS LONGO, NUNZIO GRIECO, ARMANDO COZZA, SOL BIEBER a/k/a PERCY and others as yet unknown concerning the above described offenses to and from one (1) telephone subscribed under the name Mary Penna, 663 Crescent Avenue, Apartment 4-C, Bronx, New York, bearing number (212) 365-1922 which telephone is backstrapped to 2328 Hughes Avenue, Apartment 17, Bronx, New York.

(b) such interception shall not automatically terminate when the type of communication described above in paragraph (b) has first been obtained, but shall continue until communications are intercepted which reveal the manner in which JOSEPH DENTI, JOSEPH SARCINELLA a/k/a SASH, NICHOLAS LONGO, NUNZIO GRIECO, ARMANDO COZZA, SOL BIEBER a/k/a PERCY and others as

yet unknown participate in the illegal gambling business by five or more persons which illegal gambling business has a gross revenue in excess of \$2,000 in a single day, and which reveal the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this Order, whichever is earlier.

PROVIDING THAT, this authorization to intercept wire communications shall be executed as soon as practicable, after signing of this order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective, or, in any event, at the end of fifteen (15) days from the date of this Order.

PROVIDING ALSO, that Patrick T. Philbin shall provide the Court with a report on the 5th and 10th day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continued interception.

It is further ordered that the New York Telephone Company, a communication carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assist-

ance by the New York Telephone Company, to be compensated
for by the applicant at the prevailing rates.

William J. Sullivan
UNITED STATES DISTRICT JUDGE

Nov 10, 1972
Date
10 A.M.

1/32

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
APPLICATION OF THE UNITED STATES :
OF AMERICA IN THE MATTER OF AN : Misc. No.
ORDER AUTHORIZING THE INTERCEPTION :
OF WIRE COMMUNICATIONS :
-----X

ORDER

AUTHORIZING INTERCEPTIONS OF WIRE COMMUNICATIONS

TO: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice.

Application under oath having been made before me by EDWARD M. SHAW, an attorney with the Organized Crime and Racketeering Section of the United States Department of Justice, currently assigned to the Southern District of New York, and an "investigative or law enforcement officer" as defined in Section 2510 (7) of Title 18, United States Code, for an Order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the court finds:

(a) there is probable cause for belief that JOSEPH DENTI, JOSEPH SARCINELLA aka "Sash", NICHOLAS LONGO, NUNZIO GRIECO and ARMANDO COZZA, and others as yet unknown have committed and are committing offenses involving the operation of an illegal gambling business of five or more persons, which illegal gambling business has a gross revenue in excess of \$2,000 in a single day or has been in substantially continuous operation for a period in excess of thirty (30) days in violation of Article 225 of the Penal Law of the State of New York and thereby

illegal gambling business by five or more persons which illegal gambling business has a gross revenue in excess of \$2,000 in a single day, and which reveal the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this Order, which ever is earlier.

PROVIDING THAT, this Authorization to intercept wire communications shall be executed as soon as practicable, after signing of this order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective, or, in any event, at the end of fifteen (15) days from the date of this Order.

PROVIDING ALSO, that Edward M. Shaw shall provide the Court with a report on the 5th and 10th day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continuing interception.

It is further ordered that the New York Telephone Company, a communication carrier as defined in Section 2510 (10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company, to be compensated for by the applicant at the prevailing rate.

W. Constance B. North
UNITED STATES DISTRICT JUDGE

7. 5. 1978
DATE

:pa

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
APPLICATION OF THE UNITED STATES :
OF AMERICA IN THE MATTER OF AN : Misc. No. 19-7707
ORDER AUTHORIZING THE CONTINUED :
INTERCEPTION OF WIRE :
COMMUNICATIONS :
-----x

ORDER

AUTHORIZING THE CONTINUED INTERCEPTIONS OF
WIRE COMMUNICATIONS

To: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice

Application under oath having been made before me by Edward M. Shaw, an attorney with the Organized Crime and Racketeering Section of the United States Department of Justice, currently assigned to the Southern District of New York, and an "investigative or law enforcement officer" as defined in Section 2510(7) of Title 18, United States Code, for an Order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the court finds:

(a) there is probable cause for belief that JOSEPH DENTI, JOSEPH SARCINELLA a/k/a SASH, NICHOLAS LONGO, NUNZIO GRIECO, JOSEPH FALCO, and others as yet unknown have committed and are committing offenses involving the operation of an illegal gambling business of five or more persons, which illegal gambling business has a gross revenue in excess of \$2,000 in a single day or has been in substantially continuous operation for a period in

excess of thirty (30) days in violation of Article 225 of the Penal Law of the State of New York and thereby in violation of Section 1955 of Title 18, United States Code, and are conspiring to commit such an offense in violation of Section 371 of Title 18, United States Code;

(b) there is probable cause to believe that particular wire communications concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular these wire communications will concern the receipt and placing of bets and lay-off wagers on horse races and sporting events, the exchange of line information, and the dissemination of such information to persons engaged in the unlawful business of gambling, and the participants in the commission of the above described offenses;

(c) normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) there is probable cause to believe that one (1) telephone bearing number (212) 365-1922 subscribed in the name of Mary Penna located at 663 Crescent Avenue, Apartment 4-C, Bronx, New York, and backstrapped to 2328 Hughes Avenue, Apartment 17, Bronx, New York, is being used by JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "SASH", NICHOLAS LONGO, NUNZIO GRIECO, JOSEPH FALCO, and others as yet unknown.

continuing conspiracy to violate Section 1955 of Title 18, United States Code.

WHEREFORE, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice are authorized, pursuant to application authorized by the Attorney General of the United States, the Honorable Richard G. Kleindienst, under the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

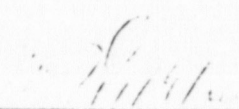
- (a) intercept wire communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a SASH, NICHOLAS LONGO, NUNZIO GRIECO, JOSEPH FALCO, and others as yet unknown concerning the above described offenses to and from one (1) telephone subscribed under the name Mary Penna, 663 Crescent Avenue, Apartment 4-C, Bronx, New York, bearing number (212) 365-1922 which telephone is backstrapped to 2328 Hughes Avenue, Apartment 17, Bronx, New York.
- (b) such interception shall not automatically terminate when the type of communication described above in paragraph (b) has first been obtained, but shall continue until communications are intercepted which reveal the manner in which JOSEPH DENTI, JOSEPH SARCINELLA a/k/a SASH, NICHOLAS LONGO, NUNZIO GRIECO, JOSEPH FALCO, and others as yet unknown participate in the illegal gambling business by five or more persons which illegal gambling business has a gross revenue in excess of \$2,000 in a single day, and which reveal the identities of their confederates, their places of

operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this Order, whichever is earlier.

PROVIDING THAT, this authorization to intercept wire communications shall be executed as soon as practicable, after signing of this order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective, or, in any event, at the end of fifteen (15) days from the date of this Order.

PROVIDING ALSO, that Edward M. Shaw shall provide the Court with a report on the 5th and 10th day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continued interception.

It is further ordered that the New York Telephone Company, a communication carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company, to be compensated for by the applicant at the prevailing rates.


UNITED STATES DISTRICT JUDGE


Date

EMS:feh

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
APPLICATION OF THE UNITED STATES :
OF AMERICA IN THE MATTER OF AN : Misc. No.
ORDER AUTHORIZING THE INTERCEPTION :
OF WIRE COMMUNICATIONS :
-----x

ORDER

AUTHORIZING INTERCEPTIONS OF WIRE COMMUNICATIONS

TO: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice

Application under oath having been made before me by
JAMES W. DOUGHERTY, an attorney with the Organized Crime and
Racketeering Section of the United States Department of Justice,
currently assigned to the Southern District of New York, and an
investigative or law enforcement officer as defined in Section
2510(7) of Title 18, United States Code, for an Order authorizing
the interception of wire communications pursuant to Section 2518
of Title 18, United States Code, and full consideration having
been to the matters set forth therein, the court finds:

(a) there is probable cause for belief that
JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash",
VITO DI SALVO, FRANK FORMOSA, JOSEPH FALCO,
SKIPPY (LNU) and others as yet unknown have
committed and are committing offenses involv-
ing the operation of an illegal gambling
business of five or more persons, which
illegal gambling business has a gross revenue
in excess of \$2,000 in a single day or has
been in substantially continuous operation

for a period in excess of thirty (30) days in violation of Article 225 of the Penal Law of the State of New York and thereby in violation of Section 1955 of Title 18, United States Code, and are conspiring to commit such an offense in violation of Section 371 of Title 18, United States Code;

(b) there is probable cause to believe that particular wire communications concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular these wire communications will concern the receipt and placing of bets and lay-off wagers on horse races and sporting events, the exchange of line information, and the dissemination of such information to persons engaged in the unlawful business of gambling and the participants in the commission of the above described offenses;

(c) normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used;

(d) there is probable cause to believe that one (1) telephone bearing number (212) 584-4399 subscribed in the name of Rose F. Chianese, 660 Crescent Avenue, Bronx, New York, is being utilized by JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, FRANK FORMOSA, JOSEPH FAICO, SKIPPY (LNU)

and others as yet unknown in a continuing conspiracy to violate Section 1955 of Title 18, United States Code.

WHEREFORE, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice are authorized, pursuant to application authorized by the Attorney General of the United States, the Honorable RICHARD G. KLEINDIENST, under the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

(a) intercept wire communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, FRANK FORMOSA, JOSEPH FALCO, SKIPPY (LNU) and others as yet unknown concerning the above described offenses to and from telephone number (212) 584-4399 as described above;

(b) such interception shall not automatically terminate when the type of communication described above in paragraph (b) has first been obtained, but shall continue until communications are intercepted which reveal the manner in which JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, FRANK FORMOSA, JOSEPH FALCO, SKIPPY (LNU) and others as yet unknown participate in the illegal gambling business by five or more persons which illegal gambling business has a gross revenue in excess of \$2,000 in a single day, and which reveal the identities of their confederates, their places of opera-

tion, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this Order, whichever is earlier.

PROVIDING THAT, this Authorization to intercept wire communications shall be executed as soon as practicable, after signing of this order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective, or, in any event, at the end of fifteen (15) days from the date of this Order.

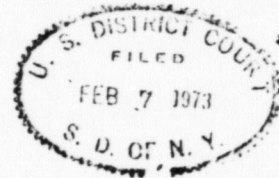
PROVIDING ALSO, that James W. Dougherty shall provide the Court with a report on the 5th and 10th day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continuing interception.

It is further ordered that the New York Telephone Company, a communication carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company, to be compensated for by the applicant at the prevailing rates.

Robert L. Carter
UNITED STATES DISTRICT JUDGE

27 Dec 1971
DATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
APPLICATION OF THE UNITED STATES:
OF AMERICA IN THE MATTER OF AN : Misc. No.
ORDER AUTHORIZING THE INTER- :
CEPTION OF WIRE COMMUNICATIONS :
-----x

ORDER

AUTHORIZING INTERCEPTIONS OF WIRE AND ORAL COMMUNICATIONS

TO: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice

Application under oath having been made before me by
JAMES W. DOUGHERTY, an attorney with the Organized Crime and
Racketeering Section of the United States Department of Justice,
currently assigned to the Southern District of New York, and an
"investigative or law enforcement officer" as defined in Section
2510(7) of Title 18, United States Code, for an Order authorizing
the interception of wire and oral communications pursuant to
Section 2518 of Title 18, United States Code, and full consider-
ation having been given to the matters set forth therein, the
court finds:

(a) there is probable cause for belief that
JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash",
VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE
(LNU), VINCENT LANDOLFI a/k/a UNCLE, and
others as yet unknown have committed and are
committing offenses involving the operation
of an illegal gambling business of five or more
persons, which illegal gambling business has a
gross revenue in excess of \$2,000 in a single
day or has been in substantially continuous
operation for a period in excess of thirty (30)

2.

days in violation of Article 225 of the Penal Law of the State of New York and thereby in violation of Section 1955 of Title 18, United States Code, and are conspiring to commit such an offense in violation of Section 371 of Title 18, United States Code;

(b) there is probable cause to believe that particular wire and oral communications concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular these wire and oral communications will concern the receipt and placing of bets and lay-off wagers on horse races and sporting events, the exchange of line information, and the dissemination of such information to persons engaged in the unlawful business of gambling and the participants in the commission of the above described offenses;

(c) normal investigative procedure reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) there is probable cause to believe that JOSEPH DENTI, JOSEPH SARCINELLA a/k/a Sash, VITO Di SALVO, JOSEPH FALCO, Skippy (LNU), Arnie (LNU), VINCENT L. DOLFI a/k/a Uncle, and others as yet unknown are using telephones bearing numbers (212) 584-4399, located at 660 Crescent Ave., Bronx, New York and (212) 226-8904, located at 80 Thompson Street, New York, New York in a continuing conspiracy to violate Section 1955 of Title 18, United States Code, and that the establishment known as Al's Espresso, 663 Crescent Avenue, Bronx, New York and Cafe Espresso, 2339 Arthur Avenue, Bronx, New York are being used

by the aforementioned individuals and others as yet unknown to carry on their illicit enterprises in a clandestine manner, i.e., by holding routine pre-arranged meetings under the protection of "look-outs" for the purpose of exchanging gambling information and, in the case of Al's Espresso, the maintenance and operation of a walk-in type gambling parlor and a cash & bet-slip "drop". WHEREFORE, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice are authorized, pursuant to application authorized by the Attorney General of the United States, the Honorable RICHARD G. KLEINDIENST, under the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

- (a) intercept wire communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, and others as yet unknown concerning the above described offenses to and from telephone numbers (212) 584-4399 and (212) 226-8904 as described above;
- (b) intercept oral communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, and others as yet unknown concerning the above offenses emanating from Al's Espresso, 663 Crescent Avenue, Bronx, New York and Cafe Espresso, 2339 Arthur Avenue, Bronx, New York.
- (c) such interception shall not automatically terminate when the type of communication described above in paragraphs (a) and (b) have

first been obtained, but shall continue until communications are intercepted which reveal the manner in which JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, and others as yet unknown participate in the illegal gambling business by five or more persons which illegal gambling business has a gross revenue in excess of \$2,000 in a single day, and which reveal the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this Order, whichever is earlier.

PROVIDING THAT, this Authorization to intercept wire and oral communications shall be executed as soon as practicable, after signing of this order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective, or, in any event, at the end of fifteen (15) days from the date of this Order.

PROVIDING ALSO, that James W. Dougherty shall provide the Court with a report on the 5th and 10th day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continuing interception.

It is further ordered that the New York Telephone Company, a communication carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant

5.

forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company, to be compensated for by the applicant at the prevailing rates.


UNITED STATES DISTRICT JUDGE

7/19/13
DATE 20/10 20 AM

JWD:feh

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
APPLICATION OF THE UNITED STATES
OF AMERICA IN THE MATTER OF AN : Misc. No.
ORDER AUTHORIZING THE INTER- :
CEPTION OF WIRE COMMUNICATIONS :
-----x

ORDER

AUTHORIZING INTERCEPTIONS OF WIRE AND ORAL COMMUNICATIONS

TO: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice

Application under oath having been made before me by
JAMES W. DOUGHERTY, an attorney with the Organized Crime and
Racketeering Section of the United States Department of Justice,
currently assigned to the Southern District of New York, and an
"investigative or law enforcement officer" as defined in Section
2510(7) of Title 18, United States Code, for an Order authorizing
the interception of wire communications and extending the period
for the interception of oral communications pursuant to Section
2518 of Title 18, United States Code, and full consideration
having been given to the matters set forth therein, the court
finds:

- (a) there is probable cause for belief that
JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash",
VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE
(LNU), VINCENT LANDOLFI a/k/a UNCLE, and
others as yet unknown have committed and are
committing offenses involving the operation
of an illegal gambling business of five or more
persons, which illegal gambling business has a
gross revenue in excess of \$2,000 in a single
day or has been in substantially continuous
operation for a period in excess of thirty (30)

days in violation of Article 225 of the Penal Law of the State of New York and thereby in violation of Section 1955 of Title 18, United States Code, and are conspiring to commit such an offense in violation of Section 371 of Title 18, United States Code;

(b) there is probable cause to believe that particular wire and oral communications concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular these wire and oral communications will concern the receipt and placing of bets and lay-off wagers on horse races and sporting events, the exchange of line information, and the dissemination of such information to persons engaged in the unlawful business of gambling and the participants in the commission of the above described offenses;

(c) normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) there is probable cause to believe that JOSEPH DENTI, JOSEPH SARCINELLA a/k/a Sash, VITO Di SALVO, JOSEPH FALCO, Skippy (LNU), Arnie (LNU), VINCENT LANDOLFI a/k/a Uncle, and others as yet unknown are using one (1) telephone bearing number (212) 966-5451, located at 80 Thompson Street, New York, New York in a continuing conspiracy to violate Section 1955 of Title 18, United States Code, and that the establishments known as Al's Espresso, 663 Crescent Avenue, Bronx, New York and Cafe Espresso, 2339 Arthur

Avenue, Bronx, New York are being used by the aforementioned individuals and others as yet unknown to carry on their illicit enterprises in a clandestine manner, i.e., by holding routine pre-arranged meetings under the protection of "look-outs" for the purpose of exchanging gambling information and, in the case of Al's Espresso, the maintenance and operation of a walk-in type gambling parlor and a cash and bet-slip "drop".

WHEREFORE, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice are authorized, pursuant to application authorized by the Attorney General of the United States, the Honorable RICHARD G. KLEINDIENST, under the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

- (a) intercept wire communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, and others as yet unknown concerning the above described offenses to and from telephone number (212) 966-5451 as described above;
- (b) continue to intercept oral communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, and others as yet unknown concerning the above offenses emanating from Al's Espresso, 663 Crescent Avenue, Bronx, New York and Cafe Espresso, 2339 Arthur Avenue, Bronx, New York.
- (c) such interception shall not automatically terminate when the type of communication

described above in paragraphs (a) and (b) have first been obtained, but shall continue until communications are intercepted which reveal the manner in which JOSEPH BENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, and others as yet unknown participate in the illegal gambling business by five or more persons which illegal gambling business has a gross revenue in excess of \$2,000 in a single day, and which reveal the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this Order, whichever is earlier.

PROVIDING THAT, this Authorization to intercept wire and oral communications shall be executed as soon as practicable after signing of this order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 1.9 of Title 18, United States Code, and must terminate upon attainment of the authorized objective, or, in any event, at the end of fifteen (15) days from the date of this Order.

PROVIDING ALSO, that James W. Dougherty shall provide the Court with a report on the 5th and 10th day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continuing interception.

It is further ordered that the New York Telephone Company, a communication carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant

5.

forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company, to be compensated for by the applicant at the prevailing rates.

Robert J. Wood
UNITED STATES DISTRICT JUDGE

DATE

*March 7, 1973**11.30 AM*

JWD:feh

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
 APPLICATION OF THE UNITED STATES :
 OF AMERICA IN THE MATTER OF AN : Misc. No.
 ORDER AUTHORIZING THE INTERCEPTION :
 OF WIRE COMMUNICATIONS :
 -----X

ORDERAUTHORIZING INTERCEPTIONS OF WIRE COMMUNICATIONS

TO: Special Agents of the Federal Bureau of Investigation,
 United States Department of Justice

Application under oath having been made before me by
 JAMES W. DOUGHERTY, an attorney with the Organized Crime and
 Racketeering Section of the United States Department of Justice,
 currently assigned to the Southern District of New York, and an
 "investigative or law enforcement officer" as defined in Section
 2510(7) of Title 18, United States Code, for an Order authorizing
 the interception of wire communications pursuant to Section 2518
 of Title 18, United States Code, and full consideration having
 been given to the matters set forth therein, the court finds:

(a) there is probable cause for belief that
 JOSEPH DENTI, JOSEPH SARGINELLA a/k/a "Sash",
 VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), JOHN
 PIETRAFESSA a/k/a ARNIE, VINCENT LANDOLFI a/k/a
 DICK ASARO,
 UNCLE and JIMMY, and others as yet unknown have
 committed and are committing offenses involving
 the operation of an illegal gambling business
 of five or more persons, which illegal gambling
 business has a gross revenue in excess of \$2,000
 in a single day or has been in substantially
 continuous operation for a period in excess of
 thirty (30) days in violation of Article 225 of
 the Penal Law of the State of New York and
 thereby in violation of Section 1955 of Title

18, United States Code, and are conspiring to commit such an offense in violation of Section 371 of Title 18, United States Code;

(b) there is probable cause to believe that particular wire communications concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular these wire communications will concern the receipt and placing of bets and lay-off wagers on horse races and sporting events, the exchange of line information, and the dissemination of such information to persons engaged in the unlawful business of gambling and the participants in the commission of the above described offenses;

(c) normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) there is probable cause to believe that JOSEPH DENTI, JOSEPH SARCINELLA a/k/a Sash, VITO DI SALVO, JOSEPH FALCO, Skippy (LNU), JOHN PIETRAFESSA a/k/a Arnie, VINCENT LANDOLFI a/k/a Uncle and Jimmy, DICK ASARO, and others as yet unknown are using two (2) telephones bearing numbers (212) 672-6317 and (212) 779-1476, located at 54-61 83rd Street, Queens, N.Y., in a continuing conspiracy to violate Section 1955 of Title 18, United States Code.

WHEREFORE, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice are authorized, pursuant to application authorized by the Attorney General of the United States, the Honorable RICHARD G. KLEINDIENST, under the powers

conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

(a) intercept wire communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), JOHN PIETRAFESSA a/k/a ARNIE, VINCENT LANDOLFI a/k/a UNCLE and JIMMY, DICK ASARO, and others as yet unknown concerning the above described offenses to and from telephones numbered (212) 672-6317 and (212) 779-1476 as described above;

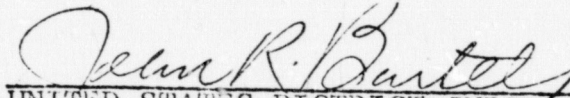
(b) such interception shall not automatically terminate when the type of communications described above in paragraph (a) have first been obtained, but shall continue until communications are intercepted which reveal the manner in which JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), JOHN PIETRAFESSA a/k/a ARNIE, VINCENT LANDOLFI a/k/a UNCLE and JIMMY, DICK ASARO, and others as yet unknown participate in the illegal gambling business by five or more persons which illegal gambling business has a gross revenue in excess of \$2,000 in a single day, and which reveal the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this Order, whichever is earlier.

PROVIDING THAT, this Authorization to intercept wire communications shall be executed as soon as practicable, after signing of this order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment

of the authorized objective, or, in any event, at the end of fifteen (15) days from the date of this Order.

PROVIDING ALSO, that James W. Dougherty shall provide the Court with a report on the 5th and 10th day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continuing interception.

It is further ordered that the New York Telephone Company, a communication carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company, to be compensated for by the applicant at the prevailing rates.


UNITED STATES DISTRICT JUDGE

(April 13 1973)
DATE

3:30 P.M.

A 57

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RETURN OF THE APPLICATION OF THE :
UNITED STATES FOR AN ORDER AUTHORIZING :
THE INTERCEPTION OF WIRE COMMUNICATIONS : ORDER
AT 212-554-2992, 212-364-5827, AND : MISC. NO. 19-97(30)
212-733-5195 :
-----X

Application having been made before this Court by Edward M. Shaw, Special Attorney, United States Department of Justice, for an order directing that all original tape recordings made pursuant to an order of this Court dated November 30, 1972, be maintained in a sealed condition in the custody of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, and this Court having been satisfied by the annexed affidavits of the said Edward M. Shaw and Special Agent Richard A. Nalley that the original tape recordings of all conversations made pursuant to the said order of this Court have been maintained in a sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, from a point in time no later than immediately following the expiration date of the said order until the present, and that said tape recordings are available to this Court, it is hereby

ORDERED that all original tape recordings which were made pursuant to said order of this Court and maintained by the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York, be maintained in the same sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, until further Order of this Court or other court of competent jurisdiction should direct their removal or unsealing.

Dated: *N.Y., N.Y.*
1/8/74

()
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IN THE MATTER OF THE APPLICATION OF THE :
 UNITED STATES FOR AN ORDER AUTHORIZING : AFFIDAVIT
 THE INTERCEPTION OF WIRE COMMUNICATIONS : REC. NO. 19-77(30)
 AT 212-584-2992, 212-364-5827, AND :
 212-733-5195 :

-----X

STATE OF NEW YORK)
 COUNTY OF NEW YORK : ss.:
 SOUTHERN DISTRICT OF NEW YORK)

Edward M. Shaw, being duly sworn, deposes and says:

1. I am a Special Attorney with the United States Department of Justice and am the Attorney-in-Charge of the New York Joint Strike Force Against Organized Crime, which is the branch office in this District of the Organized Crime and Racketeering Section of the Justice Department.

2. I make this affidavit in support of the Government's application for an order pursuant to Title 18, United States Code, Section 2518(8)(a) directing that original tape recordings made under an order of this Court dated November 30, 1972, authorizing interception of wire communications at 212-584-2992, 212-364-5827, and 212-733-5195, be maintained in the custody of the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York.

3. The above order ("surveillance order") was signed by this Court on November 30, 1972.

4. The surveillance order was one of a series of nine surveillance orders and extensions thereof entered by Judges of this Court and of the United States District Court for the Eastern District of New York in connection with an investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York, being operated in violation of Title 18, United States Code, Section 1955. The last such order expired on or about July 30, 1973.

5. No arrest or indictment has as yet resulted from any of the evidence accumulated under the surveillance order or any of the related surveillance orders referred to above.

6. As indicated in the attached affidavit of Special Agent Richard Nalley of the Federal Bureau of Investigation, the Agent in charge of this entire investigation, an FBI Agent acting under Agent Nalley's direction sealed each original tape recording made under the surveillance order in a box with evidence tape and signed and dated the seal, as soon as each such tape recording was made during the authorized surveillance period. As further indicated in Agent Nalley's affidavit, each such sealed box was then surrendered to Agent Nalley, with a completed "chain of custody" form, and was locked in a container to which only Agent Nalley has access, and has not thereafter been unsealed or removed at any time.

7. I did not specifically instruct James Dougherty, the Special Attorney on my staff to whom this investigation was assigned, to obtain a court order directing the sealing of the tape recordings under the surveillance order "immediately upon the expiration of the period of the order or extension thereof" as provided under Title 18, United States Code, Section 2518(3)(a). Mr. Dougherty left this office in June, 1973. I and the Attorney on my staff to whom I reassigned this investigation in June, 1973, at the time of Mr. Dougherty's departure, first became aware on January 3, 1974, that no such order has been obtained to date.

8. As indicated above, the procedure for prompt sealing by the Federal Bureau of Investigation was even stricter than that required under Section 2518(3)(a), since each tape was sealed as soon as a recording was made on it, and thus all tapes were sealed even prior to the expiration of the period of the surveillance order.

9. As indicated in Agent Nalley's affidavit, all of the sealed tapes under the surveillance order are available to this Court.

10. In view of these facts, I respectfully request that this Court at this time enter an order directing the continued maintenance of the original tape recordings, in the sealed condition described in Agent Nalley's affidavit, at the Federal Bureau of Investigation office at 201 East 69th Street, New York, New York, in the custody of the Federal Bureau of Investigation.

WHEREFORE, the Government respectfully requests that this Court enter an order in the form attached hereto.

Edward M. Shaw

EDWARD M. SHAW
Special Attorney
United States Department of Justice

Sworn to before me this

7 day of *January* 1974

Charles F. Admitt
Notary Public
Brooklyn County
Comm Exp
30 Apr
74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IN THE MATTER OF THE APPLICATION OF THE :
 UNITED STATES FOR AN ORDER AUTHORIZING : AFFIDAVIT
 THE INTERCEPTION OF WIRE COMMUNICATIONS : MISC. NO. 19-97(30)
 * 212-584-2992, 212-354-5827, AND :
 12-733-5195 :

-----X

STATE OF NEW YORK)
 COUNTY OF NEW YORK : ss.:
 SOUTHERN DISTRICT OF NEW YORK)

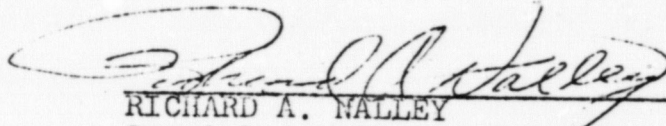
Richard A. Nalley, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation and since January of 1972, I have been supervising an investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York being operated in violation of Title 18, United States Code, Section 1955.
2. During the course of this investigation a series of orders authorizing electronic interception and eavesdropping were obtained and the applications for these orders were supported by my affidavits.
3. In particular an order of this Court (the "surveillance order") was obtained on November 30, 1972, authorizing the above-captioned interception. I supervised the operation of this interception. All procedures followed were done at my direction.
4. At my direction, the following procedures were followed with respect to the sealing and custody of tape recordings made under the said surveillance order: at the time that each original tape reel was completed, as the surveillance progressed, the reel (a) was placed in a box, (b) sealed with evidence tape, (c) dated and initialed by the FBI agent who was manning the recordings and who boxed the reel and applied the seal and (d) turned over to me with a "chain of custody" form attached indicating in whose possession the reel of tape and sealed box had been at all times prior to delivery to me.

5. Upon receipt of each sealed box containing the original tape reel and the "chain of custody" form, I immediately thereafter placed them in a locked steel container at the offices of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, to which only I have access.

6. The seals on these boxes of tape reels have not been removed or altered in any way since the time of sealing as described above, and the sealed boxes have never been removed from the locked steel container from the time that I placed them therein. All of the sealed boxes are available to this Court.

7. These procedures have completely protected the original recordings from editing or other alterations.



RICHARD A. NALLEY
Special Agent
Federal Bureau of Investigation

Sworn to before me this

7 day of January 1974

Charles F. Faggett
Notary Public
Bronx County
Com Exp 30 Mar 74.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 IN THE MATTER OF THE APPLICATION OF THE:
 UNITED STATES FOR AN ORDER AUTHORIZING : ORDER
 THE INTERCEPTION OF WIRE COMMUNICA- : MISC. NO. 19-97(31)
 TIONS AT 212-365-1922 :
 -----X

Application having been made before this Court by Edward M. Shaw, Special Attorney, United States Department of Justice, for an order directing that all original tape recordings made pursuant to an order of this Court dated December 8, 1972, be maintained in a sealed condition in the custody of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, and this Court having been satisfied by the annexed affidavits of the said Edward M. Shaw and Special Agent Richard A. Nalley that the original tape recordings of all conversations made pursuant to the said order of this Court have been maintained in a sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, from a point in time no later than immediately following the expiration date of the said order until the present, and that said tape recordings are available to this Court, it is hereby

ORDERED that all original tape recordings which were made pursuant to said order of this Court and maintained by the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York, be maintained in the same sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, until further order of this Court or other court of competent jurisdiction should direct their removal or unsealing.

Dated: 1/7/74

[Signature]
 UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 IN THE MATTER OF THE APPLICATION OF THE :
 UNITED STATES FOR AN ORDER AUTHORIZING : AFFIDAVIT
 THE INTERCEPTION OF WIRE COMMUNICATIONS : Misc. No. 19-97(31)
 AT (212) 365-1922 :
 -----X

STATE OF NEW YORK)
 COUNTY OF NEW YORK : ss.:
 SOUTHERN DISTRICT OF NEW YORK)

Edward M. Shaw, being duly sworn, deposes and says:

1. I am a Special Attorney with the United States Department of Justice and am the Attorney-in-Charge of the New York Joint Strike Force Against Organized Crime, which is the branch office in this district of the Organized Crime and Racketeering Section of the Justice Department.

2. I make this affidavit in support of the Government's application for an order pursuant to Title 18, United States Code, Section 2518(8)(a) directing that original tape recordings made under an order of this Court dated December 8, 1972 authorizing interception of wire communications at (212) 365-1922 be maintained in the custody of the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York.

3. The above order ("surveillance order") was signed by this Court on December 8, 1972.

4. The surveillance order was one of a series of nine surveillance orders and extensions thereof entered by Judges of this Court and of the United States District Court for the Eastern District of New York in connection with an investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York, being operated in violation of Title 18, United States Code, Section 1955. The last such order expired on or about July 30, 1973.

5. No arrest or indictment has as yet resulted from any of the evidence accumulated under the surveillance order or any of the related surveillance orders referred to above.

6. As indicated in the attached affidavit of Special Agent Richard Nalley of the Federal Bureau of Investigation, the agent in charge of this entire investigation, an FBI agent acting under Agent Nalley's direction sealed each original tape recording made under the surveillance order in a box with evidence tape and signed and dated the seal, as soon as each such tape recording was made during the authorized surveillance period. As further indicated in Agent Nalley's affidavit, each such sealed box was then surrendered to Agent Nalley, with a completed "chain of custody" form, and was locked in a container to which only Agent Nalley has access, and has not thereafter been unsealed or removed at any time.

7. I did not specifically instruct James Dougherty, the Special Attorney on my staff to whom this investigation was assigned, to obtain a court order directing the sealing of the tape recordings under the surveillance order "immediately upon the expiration of the period of the order or extension thereof" as provided under Title 18, United States Code, Section 2518(8)(a). Mr. Dougherty left this office in June, 1973. I and the Attorney on my staff to whom I reassigned this investigation in June, 1973, at the time of Mr. Dougherty's departure, first became aware on January 3, 1974, that no such order has been obtained to date.

8. As indicated above, the procedure for prompt sealing by the Federal Bureau of Investigation was even stricter than that required under Section 2518(8)(a), since each tape was sealed as soon as a recording was made on it, and thus all tapes were sealed even prior to the expiration of the period of the surveillance order.

9. As indicated in Agent Nalley's affidavit, all of the sealed tapes under the surveillance order are available to this Court.

10. In view of these facts, I respectfully request that this Court at this time enter an order directing the continued maintenance of the original tape recordings, in the sealed condition described in Agent Nalley's affidavit, at the Federal Bureau of Investigation office at 201 East 69th Street, New York, New York, in the custody of the Federal Bureau of Investigation.

WHEREFORE, the Government respectfully requests that this Court enter an order in the form attached hereto.

ELMSW

EDWARD M. SHAW
Special Attorney
United States Department of Justice

Sworn to before me this

7 day of January, 1974.

Chas. F. Smith
Notary Public

By City
Com Exp 30 Mar 74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
 IN THE MATTER OF THE APPLICATION OF THE :
 UNITED STATES FOR AN ORDER AUTHORIZING : AFFIDAVIT
 THE INTERCEPTION OF WIRE COMMUNICATIONS : MAR. No. 19-97 (31)
 AT 212-365-1922 :
 -----x

STATE OF NEW YORK)
 COUNTY OF NEW YORK : SS:
 SOUTHERN DISTRICT OF NEW YORK)

RICHARD A. NALLEY, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation and since January of 1972 I have been supervising an investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York being operated in violation of Title 18, United States Code, Section 1955.

2. During the course of this investigation a series of orders authorizing electronic interception and eavesdropping were obtained and the applications for these orders were supported by my affidavits.

3. In particular an order of this Court (the "surveillance order") was obtained on December 4, 1972 authorizing the above-captioned interception. I supervised the operation of this interception. All procedures followed were done at my direction.

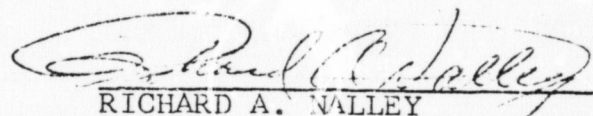
4. At my direction, the following procedures were followed with respect to the sealing and custody of tape recordings made under the said surveillance order: at the time that each original tape reel was completed, as the surveillance progressed, the reel (a) was placed in a box, (b) sealed with evidence tape, (c) dated and initialed by the FBI Agent who was manning the recordings and who boxed the reel and applied the seal and (d)

turned over to me with a "chain of custody" form attached indicating in whose possession the reel of tape and sealed box had been at all times prior to delivery to me.

5. Upon receipt of each sealed box containing the original tape reel and the "chain of custody" form, I immediately thereafter placed them in a locked steel container at the offices of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, to which only I have access.

6. The seals on these boxes of tape reels have not been removed or altered in any way since the time of sealing as described above, and the sealed boxes have never been removed from the locked steel container from the time that I placed them therein. All of the sealed boxes are available to this Court.

7. These procedures have completely protected the original recordings from editing or other alterations.



RICHARD A. NALLEY
Special Agent
Federal Bureau of Investigation

Sworn to before me this

7 day of March, 1974.
Notary Public, Bronx County
Comm Exp 30 Mar 79.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 IN THE MATTER OF THE APPLICATION OF THE :
 UNITED STATES FOR AN ORDER AUTHORIZING : ORDER
 THE INTERCEPTION OF WIRE COMMUNICATIONS : MISC. NO. 19-97(32)
 AT (212) 584-4399 :
 -----X

Application having been made before this Court by Edward M. Shaw, Special Attorney, United States Department of Justice, for an order directing that all original tape recordings made pursuant to an order of this Court date December 27, 1972, be maintained in a sealed condition in the custody of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, and this Court having been satisfied by the annexed affidavits of the said Edward M. Shaw and Special Agent Richard A. Halley that the original tape recordings of all conversations made pursuant to the said order of this Court have been maintained in a sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, from a point in time no later than immediately following the expiration date of the said order until the present, and that said tape recordings are available to this Court, it is hereby

ORDERED that all original tape recordings which were made pursuant to said order of this Court and maintained by the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York, be maintained in the same sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, until further Order of this Court or other court of competent jurisdiction should direct their removal or unsealing.

Dated: 1/7/74

Robert L. Carter
 UNITED STATES DISTRICT JUDGE

-----X
IN THE MATTER OF THE APPLICATION OF THE :
UNITED STATES FOR AN ORDER AUTHORIZING : AFFIDAVIT
THE INTERCEPTION OF WIRE COMMUNICATIONS : MISC. NO. 19-97 (32)
AT (212) 574-4399 :
-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss
SOUTHERN DISTRICT OF NEW YORK)

Edward M. Shaw, being duly sworn, deposes and says:

1. I am a Special Attorney with the United States Department of Justice and am the Attorney-in-Charge of the New York Joint Strike Force Against Organized Crime, which is the branch office in this District of the Organized Crime and Racketeering Section of the Justice Department.

2. I make this affidavit in support of the Government's application for an order pursuant to Title 18, United States Code, Section 2518 (3)(a) directing that original tape recordings made under an order of this Court dated December 27, 1972 authorizing interception of wire communications at (212) 574-4399 be maintained in the custody of the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York.

3. The above order ("surveillance order") was obtained upon application by James Dougherty, who was at that time a Special Attorney on the staff of the Strike Force. Mr. Dougherty left this Strike Force in June, 1973.

4. The above order ("surveillance order") was signed by this Court on December 27, 1972.

5. The surveillance order was one of a series of nine surveillance orders and extensions thereof entered by Judges of this Court and of the United States District Court for the Eastern District of New York in connection with an investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York, being operated in violation of Title 18, United States Code, Section 1955. The last such order expired on or about July 30, 1973.

6. No arrest or indictment has as yet resulted from any of the evidence accumulated under the surveillance order or any of the related surveillance orders referred to above.

7. As indicated in the attached affidavit of Special Agent Richard Nalley of the Federal Bureau of Investigation, the Agent in charge of this entire investigation, an FBI Agent acting under Agent Nalley's direction sealed each original tape recording made under the surveillance order in a box with evidence tape and signed and dated the seal, as soon as each such tape recording was made during the authorized surveillance period. As further indicated in Agent Nalley's affidavit, each such sealed box was then surrendered to Agent Nalley, with a completed "chain of custody" form, and was locked in a container to which only Agent Nalley has access, and has not thereafter been unsealed or removed at any time.

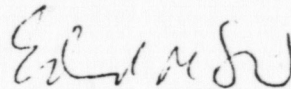
8. I did not specifically instruct James Dougherty, the Special Attorney on my staff to whom this investigation was assigned, to obtain a court order directing the sealing of the tape recordings under the surveillance order "immediately upon the expiration of the period of the order or extension thereof" as provided under Title 18, United States Code, Section 2518(8)(a). Mr. Dougherty left this office in June, 1973. I and the Attorney on my staff to whom I reassigned this investigation in June, 1973, at the time of Mr. Dougherty's departure, first became aware on January 3, 1974, that no such order has been obtained to date.

9. As indicated above, the procedure for prompt sealing by the Federal Bureau of Investigation was even stricter than that required under Section 2518(8)(a), since each tape was sealed as soon as a recording was made on it, and thus all tapes were sealed even prior to the expiration of the period of the surveillance order.

10. As indicated in Agent Nalley's affidavit, all of the sealed tapes under the surveillance order are available to this Court.

11. In view of these facts, I respectfully request that this Court at this time enter an order directing the continued maintenance of the original tape recordings, in the sealed condition described in Agent Nalley's affidavit, at the Federal Bureau of Investigation office at 201 East 69th Street, New York, New York, in the custody of the Federal Bureau of Investigation.

WHEREFORE, the Government respectfully requests that this Court enter an order in the form attached hereto.



EDWARD M. SHAW
Special Attorney
United States Department of Justice

Sworn to before me this

7 day of January 1974

Chas. Padgett
Notary Public
Bronx County
Comm Exp 10/1/74

-----X
IN THE MATTER OF THE APPLICATION OF THE

UNITED STATES FOR AN ORDER AUTHORIZING

THE INTERCEPTION OF WIRE COMMUNICATIONS

AT (P.D.) NEW YORK

:
: AFFIDAVIT

:
: MISC. NO. 19-97 (32)

:
: STATE OF NEW YORK)
: COUNTY OF NEW YORK : ss
: SOUTHERN DISTRICT OF NEW YORK)

Richard A. Nalley, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation and since January of 1972, I have been supervising an investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York being operated in violation of Title 18, United States Code, Section 1955.

2. During the course of this investigation a series of orders authorizing electronic interception and eavesdropping were obtained and the applications for these orders were supported by my affidavits.

3. In particular an order of this Court (hereinafter "surveillance order") was obtained on December 27, 1972 authorizing the above-captioned interception. I supervised the operation of this interception. All procedures followed were done at my direction.

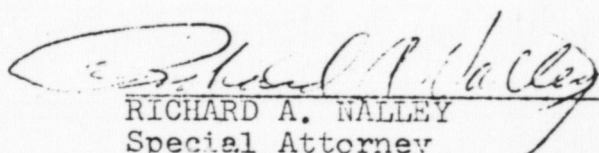
4. At my direction, the following procedures were followed with respect to the sealing and custody of tape recordings made under the said surveillance order: at the time that each original tape reel was completed, as the surveillance progressed, the reel (a) was placed in a box, (b) sealed with evidence tape, (c) dated and initialed by the FBI agent who was manning the recordings and who boxed the reel and applied the seal and (d) turned over to me with a "chain of custody" form attached indicating

in whose possession the reel to tape and sealed box had been at all times prior to delivery to me.

5. Upon receipt of each sealed box containing the original tape reel and the "chain of custody" form. I immediately thereafter placed them in a locked steel container at the offices of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, to which only I have access.

6. The seals on these boxes of tape reels have not been removed or altered in any way since the time of sealing as described above, and the sealed boxes have never been removed from the locked steel container from the time that I placed them therein. All of the sealed boxes are available to this Court.

7. These procedures have completely protected the original recordings from editing or other alterations.


RICHARD A. NALLEY
Special Attorney
Federal Bureau of
Investigation

Sworn to before me this

7 day of January 1974.

Charles F. Faggett
Notary Public, Bronx County
Comm Exp 30 Apr 74.

:pa

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 IN THE MATTER OF THE APPLICATION OF THE
 UNITED STATES FOR AN ORDER AUTHORIZING
 THE INTERCEPTION OF WIRE COMMUNICATIONS
 AT (212)-226-8904 and (212) 534-4399,
 AND OF ORAL COMMUNICATIONS AT AL'S
 EXPRESSO, 663 CRESCENT AVENUE, AND
 CAFE EXPRESSO, 2339 ARTHUR AVENUE,
 BRONX, NEW YORK.
 -----X

ORDER

MISC. NO. 19-97 (33)

Application having been made before this Court by Edward M. Shaw, Special Attorney, United States Department of Justice, for an order directing that all original tape recordings made pursuant to an order of this Court dated February 7, 1973 be maintained in a sealed condition in the custody of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, and this Court having been satisfied by the annexed affidavits of the said Edward M. Shaw and Special Agent Richard A. Nalley that the original tape recordings of all conversations made pursuant to the said order of this Court have been maintained in a sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, from a point in time no later than immediately following the expiration date of the said order until the present, and that said tape recordings are available to this Court, it is hereby

more authentic
 ORDERED that all original tape recordings which were made pursuant to said order of this Court and maintained by the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York, be maintained in the same sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, until further Order of this Court or other court of competent jurisdiction should direct their removal or unsealing.

Dated: *January 21, 1974**[Signature]*
UNITED STATES DISTRICT JUDGE

-----X
IN THE MATTER OF THE APPLICATION OF THE :
UNITED STATES FOR AN ORDER AUTHORIZING :
THE INTERCEPTION OF WIRE COMMUNICATIONS :
AT (212) 226-8904 AND (212) 584-4399 AND : AFFIDAVIT
OF ORAL COMMUNICATIONS AT AL'S EXPRESSO, : MISC. NO. 19-97 (33)
663 CRESCENT AVENUE, BRONX, NEW YORK AND :
CAFE EXPRESSO, 2339 ARTHUR AVENUE, BRONX, :
NEW YORK :
-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss:
SOUTHERN DISTRICT OF NEW YORK)

Edward M. Shaw, being duly sworn, deposes and says: .

1. I am a Special Attorney with the United States Department of Justice and am the Attorney-in-Charge of the New York Joint Strike Force Against Organized Crime, which is the Racketeering Section of the Justice Department.

2. I make this affidavit in support of the Government's application for an order pursuant to Title 18, United States Code, Section 2518 (8)(a) directing that original tape recordings made under an order of this Court dated February 7, 1973 authorizing interception of wire communications at (212) 226-8904 and (212) 584-4399 and of Oral Communications at Al's Espresso 663 Crescent Avenue, Bronx, New York and Cafe Espresso 2339 Arthur Avenue, Bronx, New York be maintained in the custody of the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York.

3. The above order ("surveillance order") was signed by this Court on February 7, 1973 and was obtained upon application by James Dougherty who was at that time a Special Attorney on the staff of this Strike Force. Mr. Dougherty left this Strike Force in June, 1973.

A 77

4. The surveillance order was one of a series of nine surveillance orders and extensions thereof entered by Judges of this Court and of the United States District Court for the Eastern District of New York in connection with a investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York, being operated in violation of Title 18, United States Code, Section 1955. The last such order expired on or about July 30, 1973.

5. No arrest or indictment has as yet resulted from any of the evidence accumulated under the surveillance order or any of the related surveillance orders referred to above.

6. As indicated in the attached affidavit of Special Agent Richard Malley of the Federal Bureau of Investigation, the Agent in charge of this entire investigation, an FBI Agent acting under Agent Malley's direction sealed each original tape recording made under the surveillance order in a box with evidence tape and signed and dated the seal, as soon as each such tape recording was made during the authorized surveillance period. As further indicated in Agent Malley's affidavit, each such sealed box was then surrendered to Agent Malley, with a completed "chain of custody" form, and was locked in a container to which only Agent Malley has access, and has not thereafter been unsealed or removed at any time.

7. I did not specifically instruct James Dougherty, the Special Attorney on my staff to whom this investigation was assigned, to obtain a court order directing the sealing of the tape recordings under the surveillance order "immediately upon the expiration of the period of the order or extension thereof" as provided under Title 18, United States Code, Section 2513 (8)(a). Mr. Dougherty left this office in June, 1973. I and the Attorney on my staff to whom I reassigned this investigation in June, 1973, at the time of Mr. Dougherty's departure, first became aware on

January 3, 1974, that no such order has been obtained to date.

8. As indicated above, the procedure for prompt sealing by the Federal Bureau of Investigation was even stricter than that required under Section 2518 (8)(a), since each tape was sealed as soon as a recording was made on it, and thus all tapes were sealed even prior to the expiration of the period of the surveillance order.

9. As indicated in Agent Nalley's affidavit, all of the sealed tapes under the surveillance order are available to this Court.

10. In view of these facts, I respectfully request that this Court at this time enter an order directing the continued maintenance of the original tape recordings, in the sealed condition described in Agent Nalley's affidavit, at the Federal Bureau of Investigation.

WHEREFORE, the Government respectfully requests that this Court enter an order in the form attached hereto.

Ed M Shaw

EDWARD M. SHAW
Special Attorney
United States Department of
Justice

Sworn to before me this

7 day of Jan 74 1974.

Phar Faggett
Notary Public
Brown County
Com Exp 30 Mar
74

EMS:pa

-----X
IN THE MATTER OF THE APPLICATION OF THE
UNITED STATES FOR AN ORDER AUTHORIZING :
THE INTERCEPTION OF WIRE COMMUNICATIONS :
AT (212) 266-8904 and (212) 524-4399, :
AND OF ORAL COMMUNICATIONS AT AL'S : AFFIDAVIT
EXPRESSO, 663 CRESCENT AVENUE, AND : MISC. NO. 19-97 (33)
CAFE EXPRESSO, 2339 ANTHUR AVENUE :
BRONX, NEW YORK. :
-----X

Richard A. Nalley, being duly sworn, deposes and says:

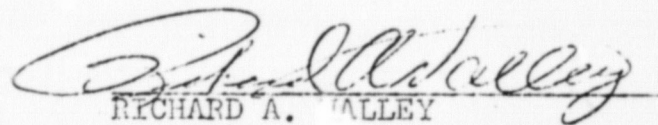
1. I am a Special Agent of the Federal Bureau of Investigation and since January of 1972, I have been supervising an investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York being operated in violation of Title 18, United States Code, Section 1955.
2. During the course of this investigation a series of orders authorizing electronic interception and eavesdropping were obtained and the applications for these orders were supported by my affidavits.
3. In particular an order of this Court (the "surveillance order") was obtained on February 7, 1973 authorizing the above-captioned interception. I supervised the operation of this interception. All procedures followed were done at my direction.
4. At my direction, the following procedures were followed with respect to the sealing and custody of tape recordings made under the said surveillance order: at the time that each original tape reel was completed, as the surveillance progressed, the reel (a) was placed in a box, (b) sealed with evidence tape, (c) dated and initialed by the FBI agent who was manning the recordings and who boxed the reel and applied the seal and (d) turned over to me with a "chain of custody" form attached indicating

prior to delivery to me.

5. Upon receipt of each sealed box containing the original tape reel and the "chain of custody" form, I immediately thereafter placed them in a locked steel container at the offices of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, to which only I have access.

6. The seals on these boxes of tape reels have not been removed or altered in any way since the time of sealing as described above, and the sealed boxes have never been removed from the locked steel container from the time that I placed them therein. All of the sealed boxes are available to this Court.

7. These procedures have completely protected the original recordings from editing or other alterations.


RICHARD A. VALLEY
Special Agent
Federal Bureau of Investigation

Sworn to before me this

7 day of January 1974.

*Charles F. [illegible]
Notary Public
Bronx County*

:pa

Com Exp 30 Jan 74.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
 IN THE MATTER OF THE APPLICATION :
 OF THE UNITED STATES FOR AN ORDER :
 AUTHORIZING THE INTERCEPTION OF :
 WIRE COMMUNICATIONS AT (212) 966-5451 :
 AND OF ORAL COMMUNICATIONS AT AL'S :
 EXPRESSO, 663 CRESCENT AVENUE, BRONX, :
 NEW YORK AND CAFE EXPRESSO, 2339 :
 ARTHUR AVENUE, BRONX, NEW YORK :
 -----x

ORDER
 Misc. No. 19-97 (34)

Application having been made before this Court by Edward M. Shaw, Special Attorney, United States Department of Justice, for an order directing that all original tape recordings made pursuant to an order of this Court dated March 7, 1973, be maintained in a sealed condition in the custody of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, and this Court having been satisfied by the annexed affidavits of the said Edward M. Shaw and Special Agent Richard A. Nalley that the original tape recordings of all conversations made pursuant to the said order of this Court have been maintained in a sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, from a point in time no later than immediately following the expiration date of the said order until the present, and that said tape recordings are available to this Court, it is hereby

ORDERED that all original tape recordings which were made pursuant to said Order of this Court and maintained by the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York, be maintained in the same sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, until further Order of this Court or

other court of competent jurisdiction should direct their removal or unsealing.

Dated: JANUARY 7, 1974

Richard J. Hand
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
 IN THE MATTER OF THE APPLICATION OF THE :
 UNITED STATES FOR AN ORDER AUTHORIZING THE :
 INTERCEPTION OF WIRE COMMUNICATIONS AT (212) : ALFIE A. IT
 966-5451 AND OF ORAL COMMUNICATIONS AT AL'S : Misc. No. 19-97 (34)
 ESPRESSO, 663 CRESCENT AVENUE, BRONX, NEW :
 YORK AND CAFE ESPRESSO, 2339 ARTHUR AVENUE, :
 BRONX, NEW YORK :
 ----- x

STATE OF NEW YORK)
 COUNTY OF NEW YORK : SS:
 SOUTHERN DISTRICT OF NEW YORK)

EDWARD M. SHAW, being duly sworn, deposes and says:

1. I am a Special Attorney with the United States Department of Justice and am the Attorney-in-Charge of the New York Joint Strike Force Against Organized Crime, which is the branch office in this District of the Organized Crime and Racketeering Section of the Justice Department.

2. I make this affidavit in support of the Government's application for an order pursuant to Title 18, United States Code, Section 2518(8)(a) directing that original recordings made under an order of this Court dated March 7, 1973 authorizing interception of wire communications at (212) 966-5451 and of oral communications at Al's Espresso, 663 Crescent Avenue, Bronx, New York, and Cafe Espresso, 2339 Arthur Avenue, Bronx, New York, be maintained in the custody of the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York.

3. The above order (surveillance order) was obtained by James Dougherty who was at that time a Special Attorney on the staff of the Strike Force. Mr. Dougherty left this Strike Force in June 1973.

4. The above order ("surveillance order") was signed by this Court on March 17, 1973.

5. The surveillance order was one of a series of nine surveillance orders and extensions thereof entered by Judges of this Court and of the United States District Court for the Eastern District of New York in connection with an investigation of a single integrated sports and horse betting operation in the

Southern and Eastern Districts of New York, being operated in violation of Title 18, United States Code, Section 1955. The last surveillance order expired on or about July 30, 1973.

5. No arrest or indictment has as yet resulted from any of the evidence accumulated under the surveillance order or any of the related surveillance orders referred to above.

6. As indicated in the attached affidavit of Special Agent Richard Nalley of the Federal Bureau of Investigation, the Agent in charge of this entire investigation, an FBI Agent acting under Agent Nalley's direction sealed each original tape recording made under the surveillance order in a box with evidence tape and signed and dated the seal, as soon as each such tape recording was made during the authorized surveillance period. As further indicated in Agent Nalley's affidavit, each such sealed box was then surrendered to Agent Nalley, with a completed "chain of custody" form, and was locked in a container to which only Agent Nalley has access, and has not thereafter been unsealed or removed at any time.

7. I did not specifically instruct James Dougherty, the Special Attorney on my staff to whom this investigation was assigned, to obtain a court order directing the sealing of the tape recordings under the surveillance order "immediately upon the expiration of the period of the order or extension thereof" as provided under Title 18, United States Code, Section 2518(8)(a). Mr. Dougherty left this office in June, 1973. I and the Attorney on my staff to whom I reassigned this investigation in June, 1973, at the time of Mr. Dougherty's departure, first became aware on January 3, 1974, that no such order has been obtained to date.

8. As indicated above, the procedure for prompt sealing by the Federal Bureau of Investigation was even stricter than that required under Section 2518(8)(a), since each tape was sealed as soon as a recording was made on it, and thus all tapes were sealed even prior to the expiration of the period of the surveillance order.

9. As indicated in Agent Nalley's affidavit, all of the sealed tapes under the surveillance order are available to this Court.

10. In view of these facts, I respectfully request that this Court at this time enter an order directing the continued maintenance of the original tape recordings, in the sealed condition described in Agent Nalley's affidavit, at the Federal Bureau of Investigation office at 201 East 69th Street, New York, New York, in the custody of the Federal Bureau of Investigation.

WHEREFORE, the Government respectfully requests that this Court enter an order in the form attached hereto.

Ed M. Shaw

EDWARD M. SHAW
Special Attorney
United States Department of Justice

Sworn to before me this

7 day of January, 1974.

Charles F. Felt
Notary Public
Brown County
Com Exp 50 Mar 74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
IN THE MATTER OF THE APPLICATION OF THE :
UNITED STATES FOR AN ORDER AUTHORIZING :
THE INTERCEPTION OF WIRE COMMUNICATIONS : AFFIDAVIT
AT (212) 966-5451 AND OF ORAL COMMUNICA- : MISC. NO. 19-97 (34)
TIONS AT AL'S EXPRESSO, 663 CRESCENT :
AVENUE, BRONX, NEW YORK AND CAFE :
EXPRESSO, 2339 ARTHUR AVENUE, BRONX, :
NEW YORK :
----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

Richard A. Nalley, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation and since January of 1972, I have been supervising an investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York being operated in violation of Title 18, United States Code, Section 1955.

2. During the course of this investigation a series of orders authorizing electronic interception and eavesdropping were obtained and the applications for these orders were supported by my affidavits.

3. In particular an order of this Court (the "surveillance order") was obtained on March 7, 1973 authorizing the above-captioned interception. I supervised the operation of this interception. All procedures followed were done at my direction.

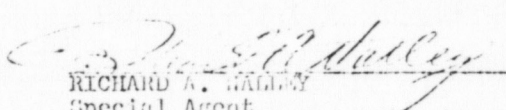
4. At my direction, the following procedures were followed with respect to the sealing and custody of tape recordings made under the said surveillance order: at the time that each original tape reel was completed, as the surveillance progressed,

the reel (a) was placed in a box, (b) sealed with evidence tape, (c) dated and initialed by the FBI agent who was manning the recordings and who boxed the reel and applied the seal and (d) turned over to me with a "chain of custody" form attached indicating in whose possession the reel of tape and sealed box had been at all times prior to delivery to me.

5. Upon receipt of each sealed box containing the original tape reel and the "chain of custody" form, I immediately thereafter placed them in a locked steel container at the offices of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, to which only I have access.

6. The seals on these boxes of tape reels have not been removed or altered in any way since the time of sealing as described above, and the sealed boxes have never been removed from the locked steel container from the time that I placed them therein. All of the sealed boxes are available to this Court.

7. These procedures have completely protected the original recordings from editing or other alterations.


RICHARD A. WADLEY
Special Agent
Federal Bureau of Investigation

Sworn to before me this

7 day of January 1974

Chas. E. Fudgett
Notary Public
Columbia County
Columbia County 38 Apr 74

-----X
IN THE MATTER OF THE APPLICATION OF THE
UNITED STATES FOR AN ORDER AUTHORIZING : ORDER
THE INTERCEPTION OF WIRE COMMUNICATIONS : MISC. NO. 73-B 2
AT (212) 672-6317 AND (212) 779-1476 :
-----X

Application having been made before this Court by Edward M. Shaw, Special Attorney, United States Department of Justice, for an order directing that all original tape recordings made pursuant to an order of this Court dated April 13, 1973, be maintained in a sealed condition in the custody of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, and this Court having been satisfied by the annexed affidavits of the said Edward M. Shaw and Special Agent Richard A. Halley that the original tape recordings of all conversations made pursuant to the said order of this Court have been maintained in a sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, from a point in time no later than immediately following the expiration date of the said order until the present, and that said tape recordings are available to this Court, it is hereby *Ordered, that said original tape recordings be maintained in a sealed condition and that said order be sealed by this Court, and its future*
ORDERED that all original tape recordings which were made pursuant to said order of this Court and maintained by the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York be maintained in the same sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York until further order of this Court or other court of competent jurisdiction should direct their removal or unsealing.

Dated: January 8, 1974

John R. Bartels
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN THE MATTER OF THE APPLICATION OF THE :
UNITED STATES FOR AN ORDER AUTHORIZING :
THE INTERCEPTION OF WIRE COMMUNICATIONS :
AT (212) 672-6317 AND (212) 779-1476 :
-----X

AFFIDAVIT

MISC. NO. 73-B-2

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

Edward M. Shaw, being duly sworn, deposes and says:

1. I am a Special Attorney with the United States Department of Justice and am the Attorney-in-Charge of the New York Joint Strike Force Against Organized Crime, which is the branch office in the Southern District of New York of the Organized Crime and Racketeering Section of the Justice Department.

2. I make this affidavit in support of the Government's application for an order pursuant to Title 18, United States Code, Section 2518(8)(a) directing that original tape recordings made under an order of this Court dated April 13, 1973 authorizing interception of wire communications at (212) 672-6317 and (212) 779-1476 be maintained in the custody of the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York.

3. The above order ("surveillance order") was obtained upon application of James Dougherty who at that time was a Special Attorney on the staff of this Strike Force. Mr. Dougherty left this Strike Force in June, 1973.

4. The above order was signed by this Court on April 13, 1973.

5. The surveillance order was one of a series of nine surveillance orders and extensions thereof (eight of which were entered by Judges of the United States District Court for the Southern District of New York) entered in connection with an investigation of

a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York, being operated in violation of Title 18, United States Code, Section 1955. The last such order expired on or about July 30, 1973.

6. No arrest or indictment has as yet resulted from any of the evidence accumulated under the surveillance order or any of the related surveillance orders referred to above.

7. As indicated in the attached affidavit of Special Agent Richard Nalley of the Federal Bureau of Investigation, the Agent in charge of this entire investigation, an FBI Agent acting under Agent Nalley's direction sealed each original tape recording made under the surveillance order in a box with evidence tape and signed and dated the seal, as soon as each such tape recording was made during the authorized surveillance period. As further indicated in Agent Nalley's affidavit, each such sealed box was then surrendered to Agent Nalley, with a completed "chain of custody" form, and was locked in a container to which only Agent Nalley has access, and has not thereafter been unsealed or removed at any time.

8. I did not specifically instruct James Dougherty, the Special Attorney on my staff to whom this investigation was assigned, to obtain a court order directing the sealing of the tape recordings under the surveillance order "immediately upon the expiration of the period of the order or extension thereof" as provided under Title 18, United States Code, Section 2518(8)(a). Mr. Dougherty left this office in June, 1973. I and the Attorney on my staff to whom I re-assigned this investigation in June, 1973, at the time of Mr. Dougherty's departure, first became aware on January 3, 1974, that no such order has been obtained to date.

9. As indicated above, the procedure for prompt sealing by the Federal Bureau of Investigation was even stricter than that required under Section 2518(8)(a), since each tape was sealed as soon as a recording was made on it, and thus all tapes were sealed even prior to the expiration of the period of the surveillance order.

10. As indicated in Agent Nalley's affidavit, all of the sealed tapes under the surveillance order are available to this Court.

11. In view of these facts, I respectfully request that this Court at this time enter an order directing the continued maintenance of the original tape recordings, in the sealed condition described in Agent Nalley's affidavit, at the Federal Bureau of Investigation office at 201 East 69th Street, New York, New York, in the custody of the Federal Bureau of Investigation.

WHEREFORE, the Government respectfully requests that this Court enter an order in the form attached hereto.

Ed M Shaw

EDWARD M. SHAW
Special Attorney
United States Department of Justice

Sworn to before me this

7 day of February 1974

Charles J. Felt
Notary Public
Bronx County
Com Exp 30 Mar 74

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
 IN THE MATTER OF THE APPLICATION OF THE :
 UNITED STATES FOR AN ORDER AUTHORIZING : AFFIDAVIT
 THE INTERCEPTION OF WIRE COMMUNICATIONS : MISC. NO. 73-B-2
 AT (212) 672-6317 AND (212) 779-1476 :
 -----X

STATE OF NEW YORK)
 COUNTY OF NEW YORK : ss.:
 SOUTHERN DISTRICT OF NEW YORK)

Richard A. Malley, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation and since January of 1972, I have been supervising an investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York being operated in violation of Title 18, United States Code, Section 1955.

2. During the course of this investigation a series of orders authorizing electronic interception and eavesdropping were obtained and the applications for these orders were supported by my affidavits.

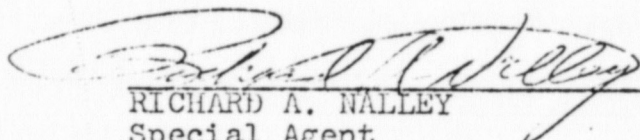
3. In particular an order of this Court (the "surveillance order") was obtained on April 13, 1973, authorizing the above-captioned interception. I supervised the operation of this interception. All procedures followed were done at my direction.

4. At my direction, the following procedures were followed with respect to the sealing and custody of tape recordings made under the said surveillance order: at the time that each original tape reel was completed, as the surveillance progressed, the reel (a) was placed in a box, (b) sealed with evidence tape, (c) dated and initialed by the FBI agent who was manning the recordings and who boxed the reel and applied the seal, and (d) turned over to me with a "chain of custody" form attached indicating in whose possession the reel of tape and sealed box had been at all times prior to delivery to me.

5. Upon receipt of each sealed box containing the original tape reel and the "chain of custody" form, I immediately thereafter placed them in a locked steel container at the offices of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, to which only I have access.

6. The seals on these boxes of tape reels have not been removed or altered in any way since the time of sealing as described above, and the sealed boxes have never been removed from the locked steel container from the time that I placed them therein. All of the sealed boxes are available to this Court.

7. These procedures have completely protected the original recordings from editing or other alterations.


RICHARD A. NALLEY
Special Agent
Federal Bureau of Investigation

Sworn to before me this

7 day of January 1974

Charles H. Hight
Notary Public
Brooklyn, New York
Am Exp 30 Mar 74

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK)

ss.:

Barbara S. Haber
being duly sworn, deposes and says that *S*he is employed in the office of the Strike Force for the Southern District of New York.

That on the *26th* day of *April* *brief and appendix*
*S*he served *2* copies of the within by placing the same in a properly postpaid franked envelope addressed:

*to all Counsel, per
attached list*

And deponent further says that *S*he sealed the said envelope and placed the same in the mail drop for mailing at the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Barbara S. Haber

Sworn to before me this
26th day of *April*, 197*6*

Steven K. Frankel
STEVEN K. FRANKEL
Notary Public, State of New York
No. 24-4607105
Qualified in Kings County
Commission *27* March 30, 19*77*

United States v. Mario Gigante, et. al.
75 Cr. 94

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United States v. Mario Gigante, et. al.
75 Cr. 94

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Daniel Di Giacomo

*Resato called wants to waive appearance
can't get here will send letter*